

UNITED STATES - REPUBLIC OF KOREA INCOME TAX CONVENTION

*Convention Signed at Seoul June 4, 1976;*

*Ratification Advised by the Senate of the United States of America July 9, 1979;*

*Ratified by the President of the United States of America July 25, 1979;*

*Ratified by the Republic of Korea December 16, 1976;*

*Ratifications Exchanged at Washington September 20, 1979;*

*Proclaimed by the President of the United States of America October 23, 1979;*

*Entered into Force October 20, 1979.*

GENERAL EFFECTIVE DATE UNDER ARTICLE 31: 1 JANUARY 1980

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TAX CONVENTION WITH THE REPUBLIC OF KOREA

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC  
OF KOREA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF  
FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND THE  
ENCOURAGEMENT OF INTERNATIONAL TRADE AND INVESTMENT, SIGNED AT  
SEOUL JUNE 4, 1976, TOGETHER WITH A RELATED EXCHANGE OF NOTES

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,  
*Washington, August 14, 1976.*

The PRESIDENT,  
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention between the United States and the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and the Encouragement of International Trade and Investment signed at Seoul June 4, 1976, together with a related exchange of notes.

The Convention with Korea is similar, in all essential respects, to other tax conventions entered into by the United States in recent years, such as the convention with Iceland which entered into force last

year.

The Convention establishes maximum rates of withholding tax in the source country on income payments flowing between the two countries. The rate of withholding tax on portfolio dividends is limited to 15 percent, while on dividends paid by a subsidiary to a parent corporation the rate of tax may not exceed 10 percent. The maximum rate of withholding tax on interest is 12 percent except that interest derived by the Government of one of the Contracting States or by its local authorities or instrumentalities is exempt from withholding at the source. Royalties are subject in general to a 15 percent maximum rate of tax. However, the tax on literary and artistic royalties, including motion picture royalties, is limited to 10 percent.

The provisions of the Convention dealing with the taxation of business and personal service income are essentially the same as in our other recent conventions as are those dealing with definitional and administrative matters. For example, a resident of one country will not be subject to tax in the other country on business profits unless those profits are attributable to a permanent establishment which the resident maintains in the other country. Similarly, for business visitors from one country temporarily present in the other, the host country may tax his income only if certain tests in terms of time spent or amounts earned are met.

One unusual provision of the Convention is found in Article 25, which provides a special exemption from United States social security taxes for Korean residents who are temporarily present in Guam. A similar exemption is provided in the Internal Revenue Code for Philippine residents temporarily present in Guam. The Koreans argued that the Philippine exemption provides an unfair advantage to Philippine residents and the firms which hire them and asked that a similar exemption be written into the Convention for Korean residents. The Convention provides that Korean residents will be exempt from social security taxes only so long as the statutory exemption is in effect for Philippine residents. This provision has the approval of the Department of Health, Education and Welfare.

The Convention and exchange of notes will enter into force on the thirtieth day following the exchange of instruments of ratification. It shall have effect with respect to withholding taxes and with respect to the special exemption from social security taxes to amounts paid on or after the first day of the second month following the date on which the Convention enters into force. With respect to other taxes it shall have effect for taxable years beginning on or after January 1 of the year following the date on which the Convention enters into force. Once in force, the Convention will remain in effect for a minimum of five years and indefinitely thereafter subject to the right of either party to terminate it by giving six-months' notice for that purpose pursuant to the provisions of the Convention.

The exchange of notes is similar in effect to those exchanged in connection with our convention with Trinidad and Tobago in which the United States agrees, when feasible, to resume discussions with Korea with a view toward reaching agreement on a supplementary protocol providing a tax impetus to flows of United States capital and technology to Korea.

A technical memorandum explaining in detail the provisions and effect of the Convention is being

prepared by the Department of the Treasury and will be submitted to the Senate Foreign Relations Committee for consideration in connection with the Convention.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of this Convention. It has the approval of both Departments.

Respectfully submitted,

CHARLES W. ROBINSON.

Enclosure: Convention and exchange of notes.

#### LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 3, 1976.*

*To the Senate of the United States:*

I transmit herewith, for Senate advice and consent to ratification, the Convention signed at Seoul on June 4, 1976, between the Government of the United States of America and the Government of the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and the Encouragement of International Trade and Investment, together with a related exchange of notes.

There is no convention on this subject presently in force between the United States and Korea.

The Convention follows generally the form and content of most conventions of this type recently concluded by the United States. Its primary purpose is to identify clearly the tax interests of the two countries to avoid double taxation and to help prevent the illegal evasion of taxation.

For the information of the Senate, I also transmit a covering report of the Department of State with respect to the Convention.

This Convention would promote closer economic cooperation and more active trade between the United States and Korea.

I urge the Senate to act favorably at an early date on this Convention and its related exchange of notes and to give its advice and consent to ratification.

GERALD R. FORD.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

CONSIDERING THAT:

The Convention between the United States of America and the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and the Encouragement of International Trade and Investment was signed at Seoul on June 4, 1976, together with a related exchange of notes, the texts of which are hereto annexed;

The Senate of the United States of America by its resolution of July 9, 1979, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Convention and related exchange of notes

The Convention and related exchange of notes were ratified by the President of the United States of America on July 25, 1979, in pursuance of the advice and consent of the Senate, and was ratified on the part of the Republic of Korea on December 16, 1976;

It is provided in Article 31 of the Convention that the Convention shall enter into force on the thirtieth day following the exchange of instruments of ratification and shall have effect as specified in Article 31;

The instruments of ratification of the Convention were exchanged at Washington on September 20, 1979, and accordingly the Convention, with related exchange of notes, entered into force on October 20, 1979, with effectiveness as specified in Article 31;

NOW, THEREFORE, I, Jimmy Carter, President of the United States of America, proclaim and make public the Convention, with related exchange of notes, to the end that they be observed and fulfilled' with good faith on and after October 20, 1979, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this twenty-third day of October in the year of our Lord one thousand nine hundred seventy-nine and of the Independence of the United States of America the two hundred fourth.

By the President:

JIMMY CARTER

WARREN CHRISTOPHER,  
*Acting Secretary of State*

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE  
REPUBLIC OF KOREA FOR THE AVOIDANCE OF DOUBLE TAXATION  
AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO  
TAXES ON INCOME AND THE ENCOURAGEMENT OF INTERNATIONAL  
TRADE AND INVESTMENT.

The Government of the United States of America and the Government of the Republic of Korea, desiring to conclude a convention for the avoidance of double taxation of income and the prevention of fiscal evasion and the encouragement of international trade and investment have appointed for that purpose as their respective Plenipotentiaries:

The Government of the United States of America:  
His Excellency Richard L. Sneider, Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Korea;

The Government of the Republic of Korea:  
His Excellency Park Tong-jin, Minister of Foreign Affairs of the Republic of Korea;

Who, having communicated to each other their full powers, found in good and due form, have agreed upon the following Articles.

ARTICLE 1  
Taxes Covered

(1) The taxes which are the subject of this Convention are:

- (a) In the case of the United States, the Federal income taxes imposed by the Internal Revenue Code (the United States tax), and
- (b) In the case of Korea, the income tax and the corporation tax (the Korean tax).

(2) This Convention shall also apply to taxes substantially similar to those covered by paragraph (1) which are imposed in addition to, or in place of, existing taxes after the date of signature of this Convention.

(3) For the purpose of Article 7 (Nondiscrimination), this Convention shall also apply to taxes of every kind imposed at the National, state, or local level. For the purpose of Article 28 (Exchange of Information) this Convention shall also apply to taxes of every kind imposed at the National level.

ARTICLE 2  
General Definitions

by the United States or Korea, reference to the "United States" or "Korea", as the case may be, shall be construed as referring to that area.

(4) The termination in respect of the United States or Korea of this Convention under Article 32 (Termination) shall, unless otherwise expressly agreed by both Contracting States, terminate the application of this Convention to any area to which the Convention has been extended under this Article by the United States or Korea.

ARTICLE 30  
Assistance in Collection

(1) Each of the Contracting States shall endeavor to collect on behalf of the other Contracting State such taxes imposed by that other Contracting State as will ensure that any exemption or reduced rate of tax granted under this Convention by that other Contracting State shall not be enjoyed by persons not entitled to such benefits.

(2) In no case shall this Article be construed so as to impose upon one of the Contracting States the obligation to carry out measures at variance with the laws, administrative practices, or public policy of either Contracting State with respect to the collection of its own taxes.

ARTICLE 31  
Entry into Force

This Convention shall be ratified and instruments of ratification shall be exchanged at Washington as soon as possible. It shall enter into force on the thirtieth day following the exchange of instruments of ratification and shall then have effect for the first time:

(a) As respects the rate of withholding taxes and Article 25 (Exemption from Social Security Taxes), to amounts paid on or after the first day of the second month following the date on which this Convention enters into force;

(b) As respects other taxes, to taxable years beginning on or after January 1 of the year following the date on which this Convention enters into force.

ARTICLE 32  
Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention at any time after 5 years from the date on which this Convention enters into force provided that at least 6 months' prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have force and effect as respects income of taxable years beginning (or, in the case of withholding taxes and social security